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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013

No. 15/2013 (Comoros)

Communication addressed to the Government on 1 November 2012

Concerning: Mohamed Amiri Salimou

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights pursuant to resolution 1991/42. The Commission then clarified and extended the Working Group's mandate by resolution 1997/50. The Human Rights Council assumed the Working Group's mandate in its decision No. 2006/102 and extended it for a further three-year period by resolution 15/18 of 30 September 2010. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or any other status and aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Mohamed Amiri Salimou, born on 6 August 1962, joined the Comorian army in 1988, occupying various posts in the military hierarchy before becoming the first general of Comoros in 2008. He underwent extensive training in France, Senegal, the United States of America and China. He also has an advanced degree in modern history from the University of Montpellier, France.

4. According to the source, he worked to improve operations and introduced the culture of a professional republican army. In his role as Chief of Staff, he chaired the meetings and headed up the commands of the Eastern African Standby Brigade (EASBRIG).

5. On 31 August 2010, Mr. Salimou was summoned to give testimony in an investigation into the murder of Lieutenant-Colonel Combo Ayouba on 13 June 2010 by unknown persons, who have still not been identified. Mr. Salimou was charged and placed under house arrest and judicial supervision. He was deprived of his liberty without a fair trial. The source alleges that Mr. Salimou was wrongly accused of being an accomplice in the murder of Mr. Ayouba on the basis of articles 44, 45 ff. of the Criminal Code.

6. During the year-long investigation, Mr. Salimou was given only one hearing by the investigating judge, and no confrontation between him and the other accused persons was organized. According to the source, the sole aim of this deliberate obstructionism was to prevent the establishment of Mr. Salimou's innocence. The source maintains that the investigation was not intended to collect evidence for both the prosecution and the defence. There is no evidence establishing a link between Mr. Salimou and the murder of Mr. Ayouba.

7. The judgement of the Moroni indictments chamber, handed down on 28 April 2011, referred the case against Mr. Salimou for aiding and abetting a murder to the assize court. None of the suspects accused him of having instructed them to commit the crime or given them the means to do so, and no ballistics report was produced. None of the necessary tests were carried out on the weapon seized at the military camp in Kandani, an AK-47, although they would have determined conclusively whether the weapon had been used in the crime. Under these circumstances, the source argues that it is materially impossible to contend that Mr. Salimou played a role in supplying the weapon used to commit the murder.

8. The appeal in cassation was lodged on 12 May 2011. The appeal in cassation against the indictment order and referral of the former chief of staff to the assize court was dismissed by the Criminal Division of the Supreme Court. The source maintains that the indictments chamber disregarded grounds for nullity raised by the defence and refused to acknowledge the shortcomings of the investigation, particularly the authorities' failure to make an effort to gather evidence for the defence and the lack of a ballistics report. The Supreme Court ruled that the appeal lodged against the judgement of the indictment chamber was inadmissible on the sole ground that the five-day period established by law for the filing of an appeal had elapsed, even though article 217 of the Code of Criminal

Procedure provides that the public prosecutor must inform the accused of the existence of an indictment order within three days of its issuance. The source refers to relevant jurisprudence, according to which non-compliance with the three-day period provided for in article 217, paragraph 3, is not grounds for rendering the judgement null and void, but simply pushes back the starting date of the period allowed for lodging an appeal in cassation. The source notes that the public prosecutor never informed either the accused persons or their legal counsel of the order issued by the indictments chamber.

9. On 4 July 2012, the Supreme Court upheld the indictment procedure, which, according to the source, was marked by serious irregularities. Mr. Salimou was to be tried by the assize court on 1 November 2012. The source feared that the only purpose of the proceedings was to eliminate a political rival and that the judiciary would be unable to withstand the pressure brought by the executive branch and fend off its interference.

10. The source stresses that neither the Criminal Code nor the Code of Criminal Procedure provides for the use of "house arrest" or "judicial supervision", to which Mr. Salimou has been subjected since 31 August 2010, as criminal sanctions. Mr. Salimou remains under judicial supervision in the administrative building where he previously lived with his family. He is under military guard and is deprived of all contact with the outside world, with the exception of visits from his lawyers. The source maintains that this type of detention, which is not provided for in any legislation, is arbitrary in nature. The source argues that, as a result, Mr. Salimou's detention is in violation of article 9 of the International Covenant on Civil and Political Rights and article 9 of the Universal Declaration of Human Rights.

11. Lastly, the source argues that the arbitrary nature of Mr. Salimou's detention arises from serious violations of his right to a fair trial, particularly the failure to make an effort to gather evidence for the defence and the lack of evidence against him and of a ballistics report.

Response from the Government

12. On 1 November 2012, the Working Group transmitted these allegations to the Government and, in accordance with paragraph 15 of its methods of work, requested it to reply within 60 days. The Working Group reminded the Government that it could request an extension of the deadline if it had good reason for doing so.

13. The Government has not responded to this communication.

Discussion

14. The Working Group has been informed that Mr. Salimou was acquitted by the assize court on 1 November 2012 on the grounds of insufficient evidence in the case of the murder of Mr. Ayouba. Mr. Salimou was released and pensioned off.

Disposition

15. In the light of the above, the Working Group renders the following opinion:

> The Working Group decides to close the case concerning Mr. Salimou's detention without deciding whether or not the detention was arbitrary, in accordance with paragraph 17 (a) of its methods of work, in view of the fact that it has been notified that this person has been released.

16. The Working Group requests that the Government reply to its communications in future.

[*Adopted on 26 August 2013*]